
(2019) 09 DEL CK 0180

In the Delhi High Court

Case No : Civil Writ Petition No. 1359 Of 2019, Civil Miscellaneous Application
No. 6208 Of 2019

Dharam Vir & Ors

APPELLANT

Vs

BGS International Public School & Ors

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Delhi School Education Rules, 1973 — Rule 121
Delhi School Education Act, 1973 — Section 8(2), 8(3)
Industrial Disputes Act, 1947 — Section 25F, 25FFF

Citation : (2019) 09 DEL CK 0180

Hon'ble Judges : A.K. Chawla, J

Bench : Single Bench

Advocate : Alok Shukla, Rajat Mathur, Mohit Gulati, Naushad Ahmed Khan,
Zahid Hanief, Manisha Chauhan

Final Decision : Dismissed

Judgement

A.K. Chawla, J

1. By the instant petition, the petitioners who were employed as Drivers by the respondent No.1/School, assail the order dated 20.12.2018 passed by the Delhi School Tribunal in short 'The Tribunal' during the proceedings of the execution of the order dated 31.01.2017 and the notice dated 27.06.2017 issued by the respondent/School.

2. Concisely, the case of the petitioners is that when they approached this court for implementation of the 6th Pay Commission Recommendations sometime in the year 2015, they came to be terminated without following the provisions of the Delhi School Education Act & Rules, 1973 in short 'the DSEAR'. Being aggrieved thereof, they preferred an appeal under Section 8(3) of the DSEAR. The appeal so made was disposed of by the Tribunal vide order dated 31.01.2017 with a direction for reinstatement of the petitioners within one month. Aggrieved thereof, the respondent No.1 preferred WP(C) No.1902/2017 BGS International

Public School & Ors. vs. Dharamvir & Ors. and that was disposed of vide order dated 17.03.2017 with the liberty to the respondent No.1/School to take action against the instant petitioners in accordance with law and the provisions of the Industrial Disputes Act, 1947. It appears that thereafter, the respondent No.1 issued notice of retrenchment dated 27.06.2017 under Section 25F of the Industrial Disputes Act in short 'the ID Act', on the plea that it was suffering heavy financial losses and on account of non feasibility of running the transport services, the transport facility provided to the students had been withdrawn, for which, the petitioners had come to be appointed as school bus drivers. After the issuance of such notices, in the proceedings initiated by the petitioners for execution of the order 31.01.2017, the impugned order dated 20.12.2018 came to be passed, and, thereby, the execution petition was disposed of, with the observations and the directions contained therein. Aggrieved thereof, the petitioners have preferred the instant writ petition.

3. During the course of hearing, the learned counsel for the petitioners, on being specifically queried as to whether the appeal preferred by the petitioners, who were the drivers and not the teachers, could maintain the appeal before the Tribunal inasmuch as the jurisdiction to entertain their grievance would fall within the purview of the ID Act. To this, learned counsel for the petitioner was at pains to contend otherwise. The aspect of the jurisdiction of the Tribunal to entertain the appeal preferred by the petitioners of course goes to the root of the matter. In the impugned order, the Tribunal adverting to the order passed by this court on 17.03.2017 and certain payments sought to be made by the respondent-School, has observed as follows:

"16. Hon'ble High Court of Delhi vide order dated 17.03.2017, disposed of in WP(C) No.1902/2017, the order of Hon'ble High Court as under:

"1. This writ petition is disposed of with liberty to the petitioner/school, in accordance with law, to take action for retrenchment of the private respondent nos.1 to 6 in this petition, inasmuch as, on behalf of the petitioner/school it is contended that since the transport department of the petitioner/school has become unviable, hence retrenchment becomes necessary.

2. Without therefore in any manner opining on merits of the case one way or the other, this petition is disposed of with liberty to the petitioner to take action against the private respondent nos.1 to 6 in accordance with law and the provisions of Industrial Disputes Act, 1947.

3. Writ petition is disposed of with the aforesaid observations."

17. According to JD Nos.1 & 2 in view of the above order of the Hon'ble High Court, they have retrenched the Decree Holders following the provisions of Section 25F and 25FFF of Industrial Dispute Act. According to the Decree Holders, their alleged retrenchment by the JD No.1 & 2 without reinstatement is illegal and the same should be set aside/ declared illegal, in this execution petition and JDs be directed to reinstate them. Hon'ble High Court, in the Writ

Petition No.1902/2017, vide order dated 17.03.2017 , has given liberty to the JD No.1 & 2 to take action against Decree Holders in accordance with the provisions of Industrial Dispute Act JD No.1 & 2 allegedly following the provisions of Section 25F and 25FFF of Industrial Dispute act retrenched the Decree Holders.

18. It is well settled legal proposition that provisions of Delhi School Education Act as well as Industrial Dispute Act are applicable to the employees of the school where the concerned employee is covered in the definition of labour. In the present case, the Decree Holders were working as driver and were covered under the definition of labour thus as per law laid down by the Hon'ble High Court of Delhi in Apeejay School Vs. Darbari Lal & Ors., 170 (2010) DLT 608 and by the Hon'ble Supreme Court in Raj Kumar vs. Director of Education 2016 SCC Online SC 317, provisions of Industrial Dispute Act are applicable. JD No.1 & 2 have followed the provisions of Section 25 F and 25 FFF and retrenched the Decree Holders. In this execution petition, this Tribunal cannot examine the validity of the retrenchment order. The retrenchment/termination of the Decree Holders qua the notice dated 27.06.2017, gives them a separate cause of action. Declining of the back wages according to Rule 121 as per order dated 31.10.2018 of the managing committee and retrenchment order dated 27.06.2017 should be challenged by the DHs as per law before appropriate forum."

4. Whether the petitioners were validly retrenched or not, of course, was not within the jurisdiction of the Tribunal to go into and any question in that regard was and is open for the petitioner to agitate under the statutory provisions of the ID Act. No error in the observations made by the Tribunal in the impugned order therefore, can be seen. As observed earlier, the jurisdiction of a forum provided under law, goes to the root of the matter and cannot be ignored.

5. Learned counsel for the petitioners on his part placing reliance upon Raj Kumar vs. Director of Education; (2016) 6 SCC 541 strenuously contends that in the judgment (supra), the petitioner, who was also a driver, had come to be granted relief by the Supreme Court, as his retrenchment was found to be bad in law. In his submissions, the retrenchment of the petitioners in the instant case is equally bad in law on the face of it inasmuch as while issuing the notice of retrenchment, the respondent had not followed any of the statutory provisions of Section 25 F of the ID Act. It may be so. No parity on facts can be drawn by the petitioners with Raj Kumar's case (supra). That was a case where Directorate of Education was a party in the original writ petition and on the said petition having been dismissed in limine by the High Court, the Supreme Court had substantially gone into the contours of Section 8 (2) & (3) of DSEAR and the judgment of the Division Bench of this court in Kathuria Public School v. Director of Education ILR (2005) 2 Delhi 312.

6. In view of the foregoing, when no perversity is seen in the impugned order of the Tribunal, which reserves the right of the petitioners to assail their retrenchment in accordance with law, the court does not find any reason to

interfere with such order in exercise of its writ jurisdiction.

7. For the foregoing reasons, the writ petition is dismissed.

8. No order as to costs.